

AMENDING THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1970  
TO STRENGTHEN THE ENFORCEMENT PROVISIONS OF THAT ACT, AND  
FOR OTHER PURPOSES

JULY 26, 1988.—Ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs,  
submitted the following

REPORT

[To accompany H.R. 4068, which on March 2, 1988, was referred jointly to the  
Committees on Interior and Insular Affairs and the Judiciary]

[Including the cost estimate of the Congressional Budget Office.]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 4068) to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following in lieu thereof:

SECTION 1. AMENDMENTS TO ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

(a) Section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) is amended by striking out "which are of archaeological interest".

(b) Section 3(3) of such Act is amended by striking out the semicolon at the end thereof and substituting a period.

(c) Section 6(a) of such Act is amended by inserting after "deface" the following: ", or attempt to excavate, remove, damage, or otherwise alter or deface".

(d) Section 6(d) of such Act is amended by striking "\$5,000" and inserting in lieu thereof "\$500".

(e) Section 10 of such Act is amended by adding the following new subsection at the end thereof:

"(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program."

## PURPOSE

The purpose of H.R. 4068<sup>1</sup> is to strengthen the enforcement capabilities of the Archaeological Resources Protection Act.

## BACKGROUND

The Archaeological Resource Protection Act (ARPA), signed into law October 1979, is designed to provide protection to archeological resources located on federal and Indian lands. Increased vandalism and looting have damaged many archeological sites. Before the enactment of ARPA, protection for archeological resources came under the 1906 Antiquities Act which had a crucial section invalidated by the courts thus creating the need for stronger legislation.

ARPA defines "archeological resource", requires a permit for excavation or removal from public or Indian lands which can be given only to qualified persons under various kinds of control. It prohibits removal without a permit, and prohibits exchange (of any kind) of illegally obtained archeological resources. ARPA also provides criminal penalties based on the value of the archeological resources. The value includes both the value of the archeological resources themselves *and* the cost of restoration and repair of such resources. It provides for civil penalties by the federal land managers, as well as providing for the payment of rewards for information and the forfeiture of items such as trucks used in illegal activities. ARPA also includes provisions for confidentiality of location of sites, promulgation of regulations, intergovernmental coordination, and cooperation with private individuals.

There have been two primary difficulties in using ARPA as an effective deterrent and law enforcement tool to prevent further looting and vandalism of archeological sites. The first is lack of funding expended by agencies on archeological protection and enforcement. The second is obtaining jury convictions with the felony threshold of \$5000. Determining the value of the archeological resources damaged entails professional evaluation and technical issues often difficult to convey to nonprofessional juries. As a result, the Archeological Resources Protection Act has not been as effective as originally anticipated.

## SECTION-BY-SECTION ANALYSIS

*Section 1* (a) deletes from Section 3(1) of the Archeological Resources Protection Act the phrase "which are of archeological interest".

Section 1(b) makes a technical change by striking out the semicolon at the end of Section 3(3) of the Archeological Resources Protection Act and substitutes a period.

Section 1(c) amends Section 6(a) of the Act by inserting after "deface" the phrase "or attempt to excavate, remove, damage, or otherwise alter or deface". The Committee recognizes that significant damage can occur to archeological resources by persons at

<sup>1</sup> H.R. 4068 was introduced March 2, 1988 by Mr. Gejdenson (for himself, Mr. Udall, Mr. Miller of California, Mr. Richardson, Mr. Campbell and Mr. DeFazio).

tempting to collect such resources, as well as by those persons succeeding in collection.

Section 1(d) amends Section 6(d) of the Act by striking "\$5,000" and inserting "\$500". Section 1(d) provides felony penalties if the value of the archeological resource involved in the offense, and the cost of restoration and repair of that resource, exceed \$500.

Section 6(d) of the Act calls for a maximum penalty, for a first offense, of a fine of \$20,000 and imprisonment for 2 years. If the offense is a second or subsequent offense, section 6(d) provides a maximum penalty of a fine of \$100,000 and imprisonment for 5 years. However, the amount of a fine that a court can impose upon a defendant convicted under section 6(d) of the Act is not limited by the amounts set forth in section 6(d). The court is empowered by 18 U.S.C. 3571, as amended by the Criminal Fine Improvements Act of 1987, P.L. 100-185, section 6, 100 Stat. 1279, to impose a higher fine. If the defendant is an individual the fine can be up to \$250,000, twice any pecuniary gain derived by the defendant, or twice any pecuniary loss inflicted by the offense, whichever is the greatest. If the defendant is an organization, the fine can be up to the greatest of \$500,000, twice any pecuniary gain derived by the defendant, or twice any pecuniary loss inflicted by the offense, whichever is the greatest. Section 1(d) of the bill will not, and is not intended to, override the provisions of 18 U.S.C. 3571.

Section 1(e) amends Section 10 of the Act by adding a new subsection directing federal land managers to increase public awareness of the significance of the archeological resources located on public lands and Indian lands and the need to protect such resources. The section also directs the land managers to submit annual reports to the appropriate committees of Congress. The Committee believes that increased public recognition of archeological resources will serve to protect them better.

#### LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATIONS

A hearing on H.R. 4068 was held by the Subcommittee on National Parks and Public Lands on June 14, 1988. The bill was favorably recommended to the Committee on Interior and Insular Affairs with an amendment in the nature of a substitute on June 30, 1988. The Committee on Interior and Insular Affairs favorably reported H.R. 4068, as amended, to the House by voice vote on July 13, 1988.

#### OVERSIGHT STATEMENT

The Committee intends to carefully monitor the implementation of this legislation to ensure compliance with the intent of the Act, but no specific oversight hearings have been conducted on this matter. No recommendations were submitted to the Committee pursuant to Rule X, clause 2(b)(2).

#### INFLATIONARY IMPACT STATEMENT

The Committee finds that enactment of this measure would have no inflationary impact on the national economy.

## COST AND BUDGET ACT COMPLIANCE

The Committee has determined that only a minimal increase in the Federal expenditure will result from enactment of this bill. The report of the Congressional Budget Office which the Committee adopts as its own, follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, July 20, 1988.

Hon. MORRIS K. UDALL,  
*Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4068, a bill to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that act, and for other purposes. The bill was ordered reported by the House Committee on Interior and Insular Affairs on July 13, 1988. Enactment of H.R. 4068 is not expected to have any significant effect on the federal budget or on those of state or local governments.

H.R. 4068 would direct federal land managers to establish programs to increase public awareness of archaeological resources. Each agency would be required to submit an annual report to the Congress regarding its efforts.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deb Reis, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,  
Acting Director.

## CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1970, AS AMENDED.

(93 Stat. 721; 16 U.S.C. 470aa et seq.)

## SEC. 3. As used in this Act—

(1) The term "archaeological resource" means any material remains of past human life or activities [which are of archaeological interest,] as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossil

ized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution[;].

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688) et seq.

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

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SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public

lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or an exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of **[\$5,000]** \$500, such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both. If the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

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SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulations may take effect

before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

*(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program.*

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